

SCOTT N. SCHOOLS (SC 9990)  
United States Attorney

BRIAN J. STRETCH (CSBN 163973)  
Chief, Criminal Division

ALLISON MARSTON DANNER (CSBN 195046)  
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
Telephone: (415) 436-7144  
FAX: (415) 436-7234  
Email: [allison.danner@usdoj.gov](mailto:allison.danner@usdoj.gov)

Attorneys for the United States

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL YOUNG,

Defendant.

No. CR 07-0559 JSW

UNITED STATES' SURREPLY TO MOTION  
TO SUPPRESS IN LIGHT OF NEWLY  
DISCOVERED EVIDENCE

Date: October 25, 2007

Time: 2:30 p.m.

The Honorable Jeffrey S. White

On September 6, 2007, defendant filed a motion to suppress the loaded firearm found in his hotel room. On September 20, 2007, the United States filed its opposition to the motion to suppress. Defendant filed his reply one week later. In that reply, defendant contended that the cases involving hotel rooms cited by the United States in its opposition were inapposite because Mr. Young "procured the room through honest means." (Defendant's Reply at 5.) Defendant provided no factual support for this assertion, which he made for the first time in his reply.

At the time it filed its brief in opposition, the United States believed—but had not yet established—that the credit card used by Mr. Young to rent the room at the Hilton had been stolen.



1 The defendant's central contention in his reply that he had "paid for the room lawfully"  
2 (Defendant's Reply at 6), renders the circumstances surrounding the credit card potentially  
3 important to this Court's disposition of defendant's motion.

4 After receiving defendant's reply, the United States conducted additional investigation  
5 into the nature of the credit card used by Michael Young.<sup>1</sup> The information received pursuant to  
6 the subpoena issued to Travelocity revealed that the reservation for Young's hotel room was  
7 made using a credit card belonging to an individual living in The Villages, Florida. (Travelocity,  
8 Booking Information and Credit Card Request, MY 127-28, attached as Exhibit A to the  
9 Declaration of Allison Danner (under seal).) The original information provided by Travelocity  
10 did not include the individual's credit card number. On October 17, 2007, Travelocity provided  
11 supplemental information that included the actual credit card number used to book Young's  
12 room. (Travelocity, Credit Card Information, MY 145, attached as Exhibit B to the Declaration  
13 of Allison Danner (under seal)). From this credit card number, the United States learned that the  
14 issuing bank for the individual's credit card was Citizen's First Bank. On October 18, 2007,  
15 SFPD Inspector Michael Hamilton contacted Citizen's First Bank and inquired about the status  
16 of this credit card. Citizen's First Bank disclosed that, on October 16, 2007, the individuals  
17 whose credit card number had been used by Michael Young had filed an affidavit of fraud listing  
18 an unauthorized payment on August 5, 2007 to Travelocity Hotel Reservations in the amount of  
19 \$1,348.60.<sup>2</sup> (Letter and Affidavit of Fraud, MY 136-138, attached as Exhibit C to the  
20 Declaration of Allison Danner (under seal)). This dollar amount listed in the affidavit is  
21 identical to the amount that Travelocity reported had been charged to the credit card with which  
22 Michael Young booked the room. (Travelocity, Booking Information, MY127.) According to  
23 the affidavit, the credit card number and security code had been used without permission by a  
24

---

25 <sup>1</sup> The Hilton Hotel did not have the relevant credit card number on file, because Young's  
26 room had been booked through Travelocity. In such cases, Travelocity uses its own credit card to  
27 prebook the rooms and Travelocity charges the credit card of the individual making the  
28 reservations.

<sup>2</sup>The timing of the affidavit has no connection to the above-captioned case.



1 person unknown to the individuals, although the actual credit card never left their possession.  
2 (Letter, MY 136.)

3 The government has not yet been able to determine how the credit card issued to the  
4 individuals was used by Michael Young to rent two rooms at the Hilton Hotel on August 5, 2007.  
5 At the very least, the evidence reveals that Young did not "procure the rooms through honest  
6 means."

7 The United States notes that there is no indication that Hilton was aware of the fraudulent  
8 nature of the credit card used by Michael Young. Instead, Hilton evicted Young from his hotel  
9 room based its belief that Young had stolen belongings from another guest and because it had  
10 found a gun in his room. While the checkbooks belonging to multiple people in Young's  
11 backpack found by Hilton security certainly suggested that Young was involved in some kind of  
12 fraud, the Hilton did not pursue this question in the late hours of August 5, 2007.

13 That Young's fraud initially went undetected does not convert his illegitimate presence in  
14 room 13575 into a space somehow protected by the Fourth Amendment. Whether a defendant  
15 has a Fourth Amendment privacy interest depends upon whether he had "a legitimate expectation  
16 of privacy in the invaded place." *Rakas v. Illinois*, 439 U.S. 128, 143 (1978) (citing *Katz v.*  
17 *United States*, 389 U.S. 347, 353, 88 (1967)). The defendant bears the burden of demonstrating  
18 that a search violated his legitimate expectation of privacy. *United States v. Silva*, 247 F.3d  
19 1051, 1055 (9th Cir. 2001).

20 An individual who has no legitimate right to be present in the relevant place does not  
21 enjoy the Fourth Amendment's protections. *Rakas*, 439 U.S. at 141 n.9 (noting that the  
22 exclusionary rule "would of course not avail those who, by virtue of their wrongful presence,  
23 cannot invoke the privacy of the premises searched"). As the *Rakas* court noted: "a 'legitimate'  
24 expectation of privacy by definition means more than a subjective expectation of not being  
25 discovered. A burglar plying his trade in a summer cabin during the off season might have a  
26 thoroughly justified subjective expectation of privacy, but it is not one which the law recognizes  
27 as 'legitimate.' His presence . . . is 'wrongful;' his expectation is not one that society is prepared  
28 to recognize as 'reasonable.'" *Rakas*, 439 U.S. at 143 n. 12.



1 The Ninth Circuit has quoted this language from *Rakas* with approval in a case involving  
2 the discovery of contraband at a hotel. "The fact that to some degree the hotel temporarily  
3 succumbed to [a defendant's] fraud, by accepting the [stolen credit] card, does not alter the  
4 answer to the question of whether he was legitimately on the premises." *United States v. Cunag*,  
5 386 F.3d 888, 894 (2004). Young does not have a legitimate expectation of privacy in a room  
6 rented with a credit card that he did not have permission to use.

7 For the reasons articulated in the United States' Opposition to Defendant's Motion to  
8 Suppress filed on September 20, Michael Young had no legitimate expectation of privacy in  
9 either the hotel room or in the backpack when Office Koniaris entered room 13575 of the Hilton  
10 Hotel and seized the backpack and gun. This conclusion is the appropriate one no matter what  
11 additional weight the Court assigns to the fraudulent credit card. In fact, under the reasoning  
12 articulated in *Rakas* and *Cunag*, the discovery that the credit card used by Michael Young to  
13 procure the room had been fraudulently obtained reveals that he never had a legitimate  
14 expectation of privacy in the room at all. For the foregoing reasons, the United States  
15 respectfully requests that the Court deny the defendant's motion to suppress the firearm in this  
16 case.

17 DATED: October 19, 2007

18 Respectfully submitted,

20 SCOTT N. SCHOOLS  
United States Attorney

21   
22 ALLISON MARSTON DANNER  
23 Assistant United States Attorney



CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the office of the United States Attorney, Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned certifies that she caused copies of

**UNITED STATES' APPLICATION TO SEAL DECLARATION OF ALLISON DANNER AND  
ACCOMPANYING EXHIBITS  
UNDER SEAL**

**SEALING ORDER  
UNDER SEAL**

**DECLARATION OF ALLISON DANNER  
UNDER SEAL**

**ORDER TO ALLOW FILING OF SURREPLY AND RELATED PAPERS**

**MOTION TO ALLOW FILING SURREPLY AND RELATED PAPERS**

**UNITED STATE'S SURREPLY TO MOTION TO SUPPRESS IN LIGHT OF NEWLY  
DISCOVERED EVIDENCE**

in the case of UNITED STATES V. MICHAEL YOUNG, CR 07-0559 JSW to be served on the parties in this action, by placing a true copy thereof in a sealed envelope, addressed as follows which is the last known address:

**Elizabeth Falk, Esq.  
Federal Public Defender's Office  
450 Golden Gate Avenue  
San Francisco, CA 94102**

X (By Personal Service), I caused such envelope to be delivered by hand to the person or offices of each addressee(s) above.

\_\_\_\_ (By Facsimile), I caused each such document to be sent by Facsimile to the person or offices of each addressee(s) above.

\_\_\_\_ (By Mail), I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at San Francisco, California.

\_\_\_\_ (By Fed Ex), I caused each such envelope to be delivered by FED EX to the address listed above.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 19, 2007

\_\_\_\_\_  
/s/  
RAWATY YIM  
United States Attorney's Office